

## If you are the Respondent

### **How do Respondents know when a Petition for Protection from Abuse petition is filed against them?**

If you are named as a Respondent in a Petition for Protection from Abuse, you will either receive a notice of the petition and summons (the summons states the date, time and location of the hearing) by person service or by publication in a newspaper. If the Petitioner has been granted an Emergency ex parte Order, you will be given a certified copy of that Order at the same time as the petition and summons. The Emergency ex parte Order stays in effect until after the full hearing is over and you must obey it as you would any Court Order.

### **What happens if someone disobeys an Order of Protection from Abuse?**

The violation of an Order of Protection from Abuse is a crime punishable by up to one year in jail and/or a fine of up to \$2,300. If the Respondent disobeys an Order of Protection, he or she is subject to arrest and, if convicted, may be fined or sent to jail.

A Petitioner who believes an Order has been violated can call the police or may go to Family Court to report the violation.

*An Order of Protection From Abuse is effective even if the Petitioner contacts the Respondent or wants to reconcile. A Respondent must do what the Order says, no matter what the Petitioner does, or asks the Respondent to do, unless the Court modifies or vacates the Order.*

### **What if I have an Order of Protection from Another State?**

You may register an Order from another state with the Family Court. This is called a "foreign protection order". Registering your foreign order will allow the Delaware Family Court to enforce the order, but does not necessarily give the Delaware Family Court jurisdiction over the order. Forms for registration are available in the resource centers.

### **Can Orders of Protection from Abuse be changed or withdrawn?**

The party who wants to change an Order of Protection from Abuse in some way may file with Family Court a form called a Motion to Modify/Extend or Vacate a Protection from Abuse Order. The motion form and assistance is available at the Resource/Self-Help Center in each county.

The Court may modify a Non-Consent Order only if the party asking for the modification proves that there is a good reason for the change. The Court may modify a Consent Order if both parties agree or if the Respondent has been found in contempt of the Consent Order.

### **What happens after the Order of Protection From Abuse expires?**

The relief given in an Order of Protection from Abuse is only in effect for up to one year (unless extended for an additional 6 months). To get permanent relief, either party may file for custody, visitation, child or spousal support, or divorce and property division. Forms for these petitions are available at the Resource/Self Help Centers in each county.

### **What if the Respondent has firearms?**

If the Respondent has threatened the Petitioner with a firearm, the Petitioner can describe the firearm and its location, the Petitioner may fill out paperwork to request the Court to enter a Writ of Sequestration along with an Emergency ex parte Order. If the Court grants the Writ of Sequestration, the police will be notified and will seize the Respondent's firearm(s).

<http://courts.delaware.gov/family>



## THE PROTECTION FROM ABUSE PROCESS

AN INFORMATIONAL  
BROCHURE  
PREPARED BY THE  
FAMILY COURT OF  
THE STATE OF  
DELAWARE

Protection From Abuse

## What is an Order of Protection From Abuse?

An Order of Protection From Abuse is an Order issued by the Family Court ordering someone to stop abusing another person, and may include other relief, such as ordering the abuser to stay away from the person being abused.

## Who can file for Protection From Abuse?

Spouses, ex-spouses, family members, persons of the opposite sex who lived together when the abuse occurred, unmarried persons who have children together, and persons who are or were involved in a substantive dating relationship may file for an Order of Protection From Abuse.

## What is abuse?

Abuse is any threatening or harmful conduct including serious emotional harm. Abuse is fully defined in 10 Delaware Code Section 1041(a).

## How does someone file for an Order of Protection From Abuse?

A Petitioner does not need an attorney to seek an Order of Protection From Abuse. Court staff will help people fill out the necessary forms during court operating hours and volunteers from a Victim Advocacy Program may also be available to help (see numbers on insert).

To file, go to the Family Court between the hours of 8:30 am and 4:30 pm, Monday through Friday. If you believe you are in immediate danger of abuse, you may ask for an emergency ex parte hearing that same day.

Ask staff at the Self-Help/Resource Centers for a Protection of Abuse Petition form. If you are asking for an emergency ex parte hearing, also ask for the Affidavit for Emergency hearing form. Fill in all the blanks on both forms. Give enough facts for the Court to know how you are being abused and whether you are in immediate danger. A Court staff person will ask you some questions. Be specific with your answers and in explaining how and when the abuse occurred.

## What happens at an emergency ex parte hearing?

If you request an emergency hearing, you will be taken before a Judicial Officer of the Court the same day. If the Judicial Officer decides to sign an Emergency ex parte Order granting you relief, you will be given a date for a full hearing which the Respondent will be asked to attend. Your Emergency ex parte Order will last until the full hearing takes place.

## What happens on the hearing day?

### Consent Process

On the day of the full hearing, Court staff will ask the Respondent if he/she is willing to have a Consent Order entered. If the Respondent is willing to have a Consent Order entered, he/she does not have to admit that there was any abuse and the Court does not decide if there was any abuse, but will enter a Consent Order of Protection of Abuse for some or all of the relief requested.

If the Respondent agrees to the relief, you and the Respondent will go into the courtroom and tell the Judicial Officer accordingly. The Judicial Officer will ask you some questions to make sure you both understand the Consent Order. The signed Consent Order will be given to both of you that day.

### Hearing

If the Respondent does not agree to a Consent Order, the Judicial Officer will conduct a hearing. Both parties will be given a chance to present their testimony and evidence. If witnesses are going to be called, the person calling the witness should ask the Court to subpoena the witness. *(Be sure to do this as early as possible prior to the hearing).*

The Judicial Officer may ask both the Petitioner and the Respondent questions. At the end of the hearing, the Judicial Officer will decide whether he or she believes the abuse occurred. If so, an Order of Protection will be signed and copies will be given to both the Petitioner and the Respondent.

## What do Orders of Protection usually say?

An Order of Protection from Abuse may provide for any or all of the following relief:

No more abuse

No contact with the Petitioner

Petitioner may be given exclusive use of the home or certain possessions

Temporary custody

Conditions of visitation

Child support or support for the Petitioner

Payment of expenses

Surrender of firearms

Counseling

Any other relief that might help prevent future violence.

## How long does an Order of Protection From Abuse usually last?

An Order of Protection From Abuse can last up to one year and can be extended for an extra six months after another hearing (To request an extension you must file a motion)

The Order remains valid and effective even if the Petitioner and Respondent get back together.

## Can I appeal the Court's decision?

An Order entered by a Commissioner may be appealed to a Judge of the Family Court by filing a form called a Request for Review of Commissioner's Order. Reviews of Commissioner's Orders must be filed with the Family Court within 10 days of the Order.

An Order entered by a Judge may be appealed to the Delaware Supreme Court. A Notice of Appeal form must be filed within 30 days of the Family Court Judge's Order.